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HOUSE BILL 335

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO COURTS; INCREASING THE PROBATIONARY PERIOD FOR A
PERSON CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS; AMENDING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 35-15-14 NMSA 1978 (being Laws 1961,
Chapter 55, Section 1, as amended) is amended to read:

"35-15-14. SUSPENSION OF SENTENCE-- PROBATION. --

A. The governing body of [~~any~~] a municipality may
provide by ordinance that the municipal court may, upon entry
of a plea of guilty or judgment of conviction:

(1) suspend in whole or part the execution of
the sentence or [~~(2)~~] place the defendant on probation for a
period not exceeding one year on terms and conditions the court

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1 deems best, or both; or

2 (2) for driving while under the influence of
3 intoxicating liquor or drugs, suspend in whole or in part the
4 execution of the sentence or place the defendant on probation
5 for a period not exceeding two years on terms and conditions
6 the court deems best, or both.

7 B. The ordinance shall provide that the court may,
8 as a condition of probation, require the defendant to serve a
9 period of time in volunteer labor to be known as community
10 service. The type of labor and period of service shall be at
11 the sole discretion of the court; provided that ~~any~~ a person
12 receiving community service shall be immune from ~~any~~ civil
13 liability other than gross negligence arising out of the
14 community service, and ~~any~~ a person who performs community
15 service pursuant to court order or ~~any~~ a criminal diversion
16 program shall not be entitled to ~~any~~ wages, shall not be
17 considered an employee for any purpose and shall not be
18 entitled to ~~workmen's~~ workers' compensation, unemployment
19 benefits or any other benefits otherwise provided by law. As
20 used in this ~~paragraph~~ subsection, "community service" means
21 any labor that benefits the public at large or any public,
22 charitable or educational entity or institution.

23 ~~B.~~ C. The ordinance shall provide that suspension
24 of execution of the sentence or probation, or both, shall be
25 granted only when the municipal judge is satisfied it will

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1 serve the ends of justice and of the public and that the
2 defendant's liability for ~~any~~ a fine or other punishment
3 imposed is fully discharged upon successful completion of the
4 terms and conditions of probation. "

5 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
6 Chapter 139, Section 54, as amended) is amended to read:

7 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
8 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
9 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

10 A. It is unlawful for a person who is under the
11 influence of intoxicating liquor to drive a vehicle within this
12 state.

13 B. It is unlawful for a person who is under the
14 influence of any drug to a degree that renders him incapable of
15 safely driving a vehicle to drive a vehicle within this state.

16 C. It is unlawful for a person who has an alcohol
17 concentration of eight one hundredths or more in his blood or
18 breath to drive a vehicle within this state.

19 D. Aggravated driving while under the influence of
20 intoxicating liquor or drugs consists of a person who:

21 (1) has an alcohol concentration of sixteen
22 one hundredths or more in his blood or breath while driving a
23 vehicle within this state;

24 (2) has caused bodily injury to a human being
25 as a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or
2 (3) refused to submit to chemical testing, as
3 provided for in the Implied Consent Act, and in the judgment of
4 the court, based upon evidence of intoxication presented to the
5 court, was under the influence of intoxicating liquor or drugs.

6 E. ~~[Every]~~ A person under first conviction pursuant
7 to this section shall be punished, notwithstanding the
8 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
9 not more than ninety days or by a fine of not more than five
10 hundred dollars (\$500), or both; provided that if the sentence
11 is suspended in whole or in part or deferred, the period of
12 probation may extend beyond ninety days but shall not exceed
13 ~~[one year]~~ two years. Upon a first conviction pursuant to this
14 section, an offender may be sentenced to not less than forty-
15 eight hours of community service or a fine of three hundred
16 dollars (\$300). The offender shall be ordered by the court to
17 participate in and complete a screening program described in
18 Subsection H of this section and to attend a driver
19 rehabilitation program for alcohol or drugs, also known as a
20 "DWI school", approved by the bureau and also may be required
21 to participate in other rehabilitative services as the court
22 shall determine to be necessary. In addition to those
23 penalties, when an offender commits aggravated driving while
24 under the influence of intoxicating liquor or drugs, the
25 offender shall be sentenced to not less than forty-eight

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1 consecutive hours in jail. If an offender fails to complete,
2 within a time specified by the court, any community service,
3 screening program, treatment program or DWI school ordered by
4 the court, the offender shall be sentenced to not less than an
5 additional forty-eight consecutive hours in jail. Any jail
6 sentence imposed pursuant to this subsection for failure to
7 complete, within a time specified by the court, any community
8 service, screening program, treatment program or DWI school
9 ordered by the court or for aggravated driving while under the
10 influence of intoxicating liquor or drugs shall not be
11 suspended, deferred or taken under advisement. On a first
12 conviction pursuant to this section, any time spent in jail for
13 the offense prior to the conviction for that offense shall be
14 credited to any term of imprisonment fixed by the court. A
15 deferred sentence pursuant to this subsection shall be
16 considered a first conviction for the purpose of determining
17 subsequent convictions.

18 F. A second or third conviction pursuant to this
19 section shall be punished, notwithstanding the provisions of
20 Section 31-18-13 NMSA 1978, by imprisonment for not more than
21 three hundred sixty-four days or by a fine of not more than one
22 thousand dollars (\$1,000), or both; provided that if the
23 sentence is suspended in whole or in part, the period of
24 probation may extend beyond one year but shall not exceed five
25 years. Notwithstanding any provision of law to the contrary

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1 for suspension or deferment of execution of a sentence:

2 (1) upon a second conviction, [~~each~~] an
3 offender shall be sentenced to a jail term of not less than
4 seventy-two consecutive hours, forty-eight hours of community
5 service and a fine of five hundred dollars (\$500). In addition
6 to those penalties, when an offender ~~commi~~ts aggravated driving
7 while under the influence of intoxicating liquor or drugs, the
8 offender shall be sentenced to a jail term of not less than
9 ninety-six consecutive hours. If an offender fails to
10 complete, within a time specified by the court, any community
11 service, screening program or treatment program ordered by the
12 court, the offender shall be sentenced to not less than an
13 additional seven consecutive days in jail. A penalty imposed
14 pursuant to this paragraph shall not be suspended or deferred
15 or taken under advisement; and

16 (2) upon a third conviction, an offender shall
17 be sentenced to a jail term of not less than thirty consecutive
18 days and a fine of seven hundred fifty dollars (\$750). In
19 addition to those penalties, when an offender ~~commi~~ts
20 aggravated driving while under the influence of intoxicating
21 liquor or drugs, the offender shall be sentenced to a jail term
22 of not less than sixty consecutive days. If an offender fails
23 to complete, within a time specified by the court, any
24 screening program or treatment program ordered by the court,
25 the offender shall be sentenced to not less than an additional

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1 sixty consecutive days in jail. A penalty imposed pursuant to
2 this paragraph shall not be suspended or deferred or taken
3 under advisement.

4 G. Upon a fourth or subsequent conviction pursuant
5 to this section, an offender is guilty of a fourth degree
6 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
7 sentenced to a jail term of not less than six months, which
8 shall not be suspended or deferred or taken under advisement.

9 H. Upon any conviction pursuant to this section, an
10 offender shall be required to participate in and complete,
11 within a time specified by the court, an alcohol or drug abuse
12 screening program and, if necessary, a treatment program
13 approved by the court. The requirement imposed pursuant to
14 this subsection shall not be suspended, deferred or taken under
15 advisement.

16 I. Upon a first conviction for aggravated driving
17 while under the influence of intoxicating liquor or drugs
18 pursuant to the provisions of Subsection D of this section,
19 as a condition of probation, an offender shall be required to
20 have an ignition interlock device installed and operating for a
21 period of one year on all motor vehicles driven by the
22 offender, pursuant to rules adopted by the bureau. Unless
23 determined by the sentencing court to be indigent, the offender
24 shall pay all costs associated with having an ignition
25 interlock device installed on the appropriate motor vehicles.

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1 If an offender drives a motor vehicle that does not have an
2 ignition interlock device installed on the motor vehicle, the
3 offender may be in violation of the terms and conditions of his
4 probation.

5 J. Upon a first conviction for driving while under
6 the influence of intoxicating liquor or drugs pursuant to the
7 provisions of Subsection A, B or C of this section, as a
8 condition of probation, an offender may be required to have an
9 ignition interlock device installed and operating for a period
10 of one year on all motor vehicles driven by the offender,
11 pursuant to rules adopted by the bureau. Unless determined by
12 the sentencing court to be indigent, the offender shall pay all
13 costs associated with having an ignition interlock device
14 installed on the appropriate motor vehicles. If an offender
15 drives a motor vehicle that does not have an ignition interlock
16 device installed on the motor vehicle, the offender may be in
17 violation of the terms and conditions of his probation.

18 K. Upon any subsequent conviction pursuant to this
19 section, as a condition of probation, a subsequent offender
20 shall be required to have an ignition interlock device
21 installed and operating for a period of at least one year on
22 all motor vehicles driven by the subsequent offender, pursuant
23 to rules adopted by the bureau. Unless determined by the
24 sentencing court to be indigent, the subsequent offender shall
25 pay all costs associated with having an ignition interlock

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1 device installed on the appropriate motor vehicles. If a
2 subsequent offender drives a motor vehicle that does not have
3 an ignition interlock device installed on the motor vehicle,
4 the subsequent offender may be in violation of the terms and
5 conditions of his probation.

6 L. In the case of a first, second or third offense
7 under this section, the magistrate court has concurrent
8 jurisdiction with district courts to try the offender.

9 M A conviction pursuant to a municipal or county
10 ordinance in New Mexico or a law of any other jurisdiction,
11 territory or possession of the United States that is equivalent
12 to New Mexico law for driving while under the influence of
13 intoxicating liquor or drugs, and that prescribes penalties for
14 driving while under the influence of intoxicating liquor or
15 drugs, shall be deemed to be a conviction pursuant to this
16 section for purposes of determining whether a conviction is a
17 second or subsequent conviction.

18 N. In addition to any other fine or fee ~~[which]~~
19 that may be imposed pursuant to the conviction or other
20 disposition of the offense under this section, the court may
21 order the offender to pay the costs of any court-ordered
22 screening and treatment programs.

23 O. As used in this section:

24 (1) "bodily injury" means an injury to a
25 person that is not likely to cause death or great bodily harm

1 to the person, but does cause painful temporary disfigurement
2 or temporary loss or impairment of the functions of any member
3 or organ of the person's body; and

4 (2) "conviction" means an adjudication of
5 guilt and does not include imposition of a sentence."

6 Section 3. EFFECTIVE DATE. --The effective date of the
7 provisions of this act is July 1, 2003.

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